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Supreme Court, U.S.
FILED

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No._____

In the
Supreme Court of the United States
October Term, 2002

PROSPER UDOGWU and IFEOMA UDOGWU,
Petitioners,

-against-

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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26 pp

QUESTIONS PRESENTED FOR REVIEW

Whether the Court of Appeals must order an evidentiary hearing, in circumstances where evidence, consisting of sworn affidavits, is presented pursuant to an application under Fed.R.Crim.P. 33 to demonstrate that part of the Government's proof was false.

PARTIES TO THE PROCEEDING

The parties to the proceeding are those named in the caption. The Appellee is the United States of America.

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The petitioners, Prosper Udogwu and Ifeoma Udogwu petition for a Writ of Certiorari to review an order of the United States Court of Appeals for the Second Circuit which affirmed a judgment of the district court denying the petitioners' motion for new trial pursuant to Fed.R.Crim.F. 33.

CITATION TO OPINION BELOW

The Order of the Court of Appeals affirming the Order of the district court denying the motion pursuant to Fed.R.Crim.P. 33 appears in the appendix hereto. The Order of the district court also appears in the appendix hereto.

STATEMENT OF JURISDICTION

The Order of the Court of Appeals was filed on June 28, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. §1251(1).

STATEMENT OF THE CASE

Prosper Emeka Udogwu and Ifeoma Ezeonu Udogwu seeks certiorari from orders denying their motion for a new trial based on newly discovered evidence pursuant to Federal Rules of Criminal Procedure 33. Previously, they had been convicted of Conspiracy to Bring a Child to the United States for Involuntary Servitude in violation of 18 U.S.C. §371, Bringing in Aliens in violation of 8 U.S.C. §1324(a)(1)(A)(iv), Harboring Aliens in violation of 8 U.S.C. §1324(a)(1)(A)(iii), Fraudulent Immigration Documents in violation of 18 U.S.C. §1546, Involuntary Servitude in violation of 18 U.S.C. §1584. Prosper Emeka Udogwu was also separately convicted of False Statements in violation of 18 U.S.C. §1001, and Ifeoma Ezeonu Udogwu was separately convicted of False Statements in a Matter Relating to Citizenship in violation of 18 U.S.C. §1015. Prosper Emeka Udogwu was principally sentenced to a term of

imprisonment of 135 months. Ifeoma Ezeonu Udogwu was principally sentenced to a term of imprisonment of 148 months. They were ordered to pay jointly and severally $283,693.17 in restitution. Their convictions were affirmed by the Court of Appeals in a summary order dated August 22, 2001.

Prosper and Ifeoma Udogwu were both born in Nigeria and became United States citizens respectively in 1994 and 1996. They were married in 1984 and have four children ranging in age from seven to fourteen. Prosper Emeka Udogwu has a doctoral degree in political science from The Graduate School and University Center of the City University of New York. He was employed as a proofreading supervisor for KLW Inc. Seybert Nicholas Printing. Ifeoma Ezeonu Udogwu worked for the Administration for Children's Services in the Bronx, New York.

The Udogwus were charged and convicted of, among other things, with smuggling two young Nigerian girls, Rosemary, who did not testify at trial and Beatrice, who did testify at trial, illegally into the United States to act as unpaid servants in their home and holding them there involuntarily, forcing them to perform household duties and childcare for the Udogwus. In addition, they were charged with various immigration offenses relating to their involuntary servitude scheme. Ifeoma Ezeonu Udogwu was also charged with fraud in connection with her own naturalization application and with a separate mail fraud scheme.

On July 20, 2001, the petitioners filed a motion pursuant to Fed.R.Crim.P.33 based on newly discovered evidence. Specifically, the motion concerned "Rosemary" and her relationship with the petitioners. The district court denied the motion without holding an evidentiary hearing, finding that the new evidence would not have changed the verdict and also lacked credibility:

> Defendants have not demonstrated that the purported new evidence would probably lead to

> an acquittal. *See, e.g., United States v. Sasso*, 59 F.3D 341, 350 (2d Cir. 1995). Indeed, I am not persuaded that the purported new evidence would make any difference, and I conclude that the purported new evidence does not cast any doubt on the correctness of the jury's verdict. The Government's evidence at trial was strong, as the Government presented substantial, credible evidence of defendants' guilt. Moreover, at trial defendants repeated lied or caused witnesses to lie or otherwise attempted to obstruct justice. As the Government points out, the purported new evidence lacks credibility.
>
> No new trial is warranted.

I. THE ORDER OF THE COURT OF APPEALS

In a summary order, the Court of Appeals held that the district court did not abuse its discretion in denying the motion without holding an evidentiary hearing:

> We find no basis for disturbing the sound judgment of the district court. Even if Rosemary's statements qualified as newly discovered evidence, and even if the jury had fully credited them, they do not present evidence that would probably have led to acquittal. As the lower court found, the jury's conviction on Count One was supported by overwhelming evidence based solely upon the Udogwus' treatment of Beatrice.

REASONS FOR GRANTING THE WRIT

1. The decision below raises a significant federal reoccurring question concerning when a district court must hold an evidentiary hearing based on a motion and exhibits filed pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Petitioners contend that the district court abused its discretion by denying their motion for a new trial without holding an evidentiary hearing.

Federal Rule of Criminal Procedure 33 permits a defendant to move for a new trial "in the interests of justice." However, "Rule 33 confers broad discretion upon a trial court to set aside a jury verdict and order a new trial to avert a perceived miscarriage of justice." *United States v. Sanchez*, 969 F.2d 1409, 1413 (2d Cir. 1992). A motion for new trial is committed to the discretion of the district court, and its decision will be reversed only for an abuse of discretion. *United States v. Wong*, 78 F.3d 73, 78 (2d Cir. 1996); *see also United States v. Petrillo*, 821 F.2d 85, 88 (2d Cir. 1987)(district court's decision given "great deference ... because it presided over the trial and is better able to determine the effect the new materials would have had"). The factual findings of a district court in denying a Rule 33 motion are reviewed for clear error. *United States v. Imran*, 964 F.2d 1313, 1318 (2d Cir. 1992).

The Udogwus were charged and convicted of, among other things, with smuggling two young Nigerian girls, Rosemary, who did not testify at trial and Beatrice, who did testify at trial, illegally into the United States to act as unpaid servants in their home and holding them there involuntarily, forcing them to perform household duties and childcare for the Udogwus.

Since December 1999, the petitioners have been actively searching for Rosemary. Prior to trial, the government was also

actively looking for her, though they had a wrong name for her. As part of a motion filed pursuant to Fed.R.Crim.P. 33, the petitioners' attached affidavits from Rosemary and others and a videotape. In December 2000, Rosemary was located in Sapelle, Delta State where she now lives. Rosemary's affidavit explained her relationship to Gregory Ezeonu, how she came to America, and how she was treated by the Udogwus. Her statements are in direct contrast to the government's witnesses and proof and material to the Udogwus' defense. Rosemary also gave video testimony before a Notary Public.

To establish Rosemary's identity, and to additionally demonstrate the diligence used to locate her, affidavits of Rosemary's mother, Adoline Orichabo and Alex Ogbomo, Esq.,were annexed to the motion. These affidavits also included a recent photograph of Rosemary.

In response to the motion and the exhibits, the government argued and the district court agreed that the evidence submitted in support of the motion was inherently suspicious in light of the defense documents submitted at trial.

To satisfy these concerns, petitioners suggested that Rosemary, her mother and other family members be questioned in Nigeria. Certainly, the United States has representatives in Nigeria who could ask questions furnished by the United States Attorney's Office. In addition, any counsel in Nigeria, whose affidavit was annexed as an Exhibit to the Rule 33 motion, could also be questioned concerning their efforts to locate Rosemary. Any question and answer sessions could be videotaped and furnished to the district court. In short, the only way to satisfy both the district court and the government as to Rosemary's identity and her statements in her affidavit (the government suggested that Rosemary's statements are those of counsel and not her own) is to question her in a setting arranged and controlled by the government.

In addition, "the proffered new evidence was significant in light of the evidence presented by the respondent. The respondent's case against the petitioners was inherently a case

in which the various crimes concerning the two alleged victims could not readily be separated from one another. The respondent characterized the petitioners' conduct as one intertwined conspiracy. The newly discovered evidence with respect to Rosemary, however goes to the heart of the alleged conspiracy because it thoroughly undermines the jury's ability to determine the petitioners' guilt.

Indeed, at sentencing, the District Court noted the impact at trial of the testimony concerning Rosemary:

> But I will not downwardly depart for extenuating family circumstances. The extraordinary family circum-stances in this case are outweighed by the nature and seriousness of the crimes that these defendants committed. It is ironic that they now ask for mercy and compassion on the behalf of their children when they so mistreated other children. The vision of a ten-year-old :Rosemary washing clothes in the backyard is a haunting one. I firmly believe it happened. She was so distraught that she tried to set the house on fire and when the fire marshal investigated it, he was so distraught by what he saw that after he returned to his office, he hand-delivered a child abuse report to the child welfare agency in the middle of the night in the Bronx. [Transcript of the sentencing proceeding, October 19, 2000 at p. 24].

In addition, the only read-backs requested by the jury concerned Rosemary. Finally, any reliance on the unpublished summary order of the Second Circuit Court of Appeals, *United States v. Udogwu*, (2nd Cir. August 22, 2001) is misplaced. The Court of Appeals did not have the benefit of the exhibits annexed to the Rule 33 motion.

In sum, the Court of Appeals should have ordered an

evidentiary hearing.

CONCLUSION

For the foregoing reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,
BARRY M. FALLICK
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Attorneys for Petitioners
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Appendix A – The Summary Order of the Court of Appeals denying the petitioners' motion for a new trial pursuant to Federal Rules of Criminal Procedure 33 filed on June 28, 2002

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 28th day of June two thousand and two.

PRESENT:

HON. GUIDO CALABRESI,
HON. ROBERT D. SACK, *and*
HON. BARRINGTON D. PARKER, JR.
Circuit Judges

United States Court of Appeals
Filed
June 28, 2002
Roseann B. MacKechnie, Clerk
Second Circuit

UNITED STATES,

Appellee,

v. SUMMARY ORDER

PROSPER EMEKA UDOGWU, also known as Prosper Emeka Udoguw, and IFEOMA EZEONU UDOGWU, also known as Fidelia Ekema Ezeonu, also known as Ifeoma Fidelia Ezeonu,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of New York (Denny Chin, J.).

UPON DUE CONSIDERATION, it is ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be and it hereby is AFFIRMED.

For Defendants-Appellants:	BARRY M. FALLICK, Rochman Platzer Fallick & Sternheim, LLP, New York, NY
For Appellee:	JENNIFER M. MOORE, Assistant United States Attorney (Celeste L. Koeleveld, Assistant United States Attorney, *of counsel), for* James B. Comey, United States Attorney for the Southern District of New York, New York, NY.

The Udogwus appeal from an order entered in the

United States District Court for the Southern District of New York (Chin, *J.*) denying their motion for a new trial based upon allegedly newly discovered evidence, pursuant to Rule 33 of the Federal Rules of Criminal Procedure. After a jury trial, the defendants were convicted, *inter alia,* of various immigration and fraud offenses arising out of their treatment of two young girls, ten-year-old Rosemary and thirteen-year-old Beatrice, whom the defendants smuggled into the United States from Nigeria and kept involuntarily as unpaid domestic servants. Count One of the indictment alleged a conspiracy to commit the substantive immigration and fraud offenses. Two of the ten overt acts in furtherance of this conspiracy related to Rosemary, while the remaining acts involved Beatrice. The other counts relevant to this appeal pertained solely to the defendants' treatment of Beatrice. We summarily affirmed their convictions. *United States v. Udogwu,* No. 00-1724, 2001 WL 964197 (2d Cir. Aug. 22, 2001).

In their present Rule 33 motion, the defendants claim to have found Rosemary in Nigeria after a year-long search. She did not testify at trial because the government had been unable to locate her. In support of their motion, the defendants proffer an affidavit and interview purportedly of Rosemary, in which she claims, among other things, not to have been mistreated by the Udogwus. According to the defendants, the statements allegedly made by Rosemary so contradict and undermine the government's case that, had this evidence been considered, the Udogwus probably would have been acquitted on Count One. They further assert that the prejudicial spillover from the trial evidence related to Rosemary resulted in their conviction on Counts Two through Six.

The district court denied the motion without discovery or a hearing. The court found that the proffered evidence would not have changed the jury's verdict, which was based upon the government's substantial and credible evidence of the defendants' guilt. The court also ruled that, in light of the defendants' repeated perjury, subornation of perjury, and other

attempts to obstruct justice at trial, the documents lacked credibility. It further noted that the defendants' assertions in their motion were inconsistent with the positions taken and evidence presented by the defendants at trial. The appellants contend on appeal that the district court erred in denying an evidentiary hearing on their motion.

A district court should only grant a new trial on the basis of newly discovered evidence when a defendant establishes (1) that the evidence is "new" in the sense that it was discovered after trial; (2) that the evidence could not have been discovered before or during trial with the exercise of due diligence; and (3) that the evidence is so material that it would probably lead to an acquittal. *See United States v. Locascio,* 6 F.3d 924, 949 (2d Cir. 1993). Further, "[a] motion for a new trial based on new evidence is to be granted only with great caution... in the most extraordinary circumstances," *United States v. Sasso,* 59 F.3d 341, 350 (2d Cir. 1995) (internal quotation marks omitted), where it is required in "the interests of justice," Fed. R. Crim. P.33. The decision of whether to permit discovery and conduct an evidentiary hearing remains within the sound discretion of the trial court. *See United States v. White,* 972 F.2d 16, 22 (2d Cir. 1992). Accordingly, we will not reverse the denial of a new-trial motion or the refusal to conduct an evidentiary hearing absent an abuse of discretion. *United States v. DiPaolo,* 835 F.2d 46, 51 (2d Cir. 1987).

We find no basis for disturbing the sound judgment of the district court. Even if Rosemary's statements qualified as newly discovered evidence, and even if the jury had fully credited them, they do not present evidence that would probably have led to acquittal. As the lower court found, the jury's conviction on Count One was supported by overwhelming evidence based solely upon the Udogwus' treatment of Beatrice.

Having reviewed all of the defendants' claims and finding them to be without merit, we AFFIRM the judgment of the district court denying the defendants' motion for a new trial.

For the Court,

ROSEANN B. MacKECHNIE
Clerk of Court

By: s/ Lucille Carr

Appendix B – The Order of the District Court denying the petitioners' motion for a new trial pursuant to Federal Rules of Criminal Procedure 33 filed on December 17, 2001

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CAE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 22nd day of August two thousand and one.

PRESENT:

HON. ROGER J. MINER,
HON. DENNIS JACOBS,
HON. GUIDO CALABRESI.
Circuit Judges

United States Court of Appeals
Filed
August 22, 2001
Roseann B. MacKechnie, Clerk
Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v. 00-1724

PROSPER EMEKA UDOGWU, also known as Prosper Emeka Udogwu, also known as Prosper Emeka Udoguw, and IFEOMA EZEONU UDOGWU, also known as Fidelia Ekema Ezeonu, also known as Ifeoma Fidelia Ezeonu,

Defendants-Appellants.

Appearing for Appellants: BARRY M. FALLICK, New York, NY Attorney for Defendant-Appellant Ifeoma Ezeonu Udogwu

JERRY L. TRITZ, New York, NY Attorney for Defendant-Appellant Prosper Emeka Udogwu

Appearing for Appellee: JENNIFER M. MOORE, New York, NY (Mary Jo White, United States Attorney for the Southern District of New York, Richard M. Strassberg, Baruch Weiss, on the brief.

Appeal from the United States District Court for the Southern District of New York (Denny Chin, J.).

UPON DUE CONSIDERATION, it is ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be and it hereby is AFFIRMED.

Prosper Emeka Udogwu and Ifeoma Ezeonu Udogwu, husband and wife, appeal from a judgment of conviction entered on June 14, 2000 in the United States District Court for the Southern District of New York (Chin, J.), on all charges arising out of their importing of undocumented aliens for household labor and other exploitation. Following a jury trial, defendants were found guilty on all counts in an eight-count indictment, charging them with illegally bringing an alien into the United States and harboring an alien (in violation of 18 U.S.C. §§1324 (a)(1)(A)(iv) and 1324 (a)(1)(A)(iii)), fraudulently possessing, obtaining, and receiving a green card (in violation of 18 U.S.C. §1546), subjecting another to involuntary servitude (in violation of 18 U.S.C. §1584), and conspiracy to do these things. Prosper Udogwu was charged with making false statements to the Immigration and Naturalization Service (in violation of 18 U.S.C. §1001), and Ifeoma Udogwu was charged with making false statements at her naturalization interview (in violation of 18 U.S.C. §1015(a)) and with mail fraud in an effort to obtain social security benefits fraudulently (in violation of 18 U.S.C. § 1341).

Prosper Udogwu was sentenced principally to 135 months in prison, and Ifeoma Udogwu, to 148 months. The defendants were adjudged jointly and severally liable for $283,693.17 in restitutionary damages for the involuntary servitude conviction, and Ifeoma Udogwu was ordered to pay $41,672 in restitutionary damages on her mail fraud conviction.

The evidence presented at trial, viewed in the light most favorable to the government, shows that in December 1987 the defendants brought a ten-year-old Nigerian girl, Ifeanyi (Rosemary), into the United States on the false pretext that Rosemary was the daughter of Ifeoma Udogwu's brother, Gregory Ezeonu. The defendants used her as an unpaid servant

for a year, subjected her to physical and emotional abuse, and when she resisted, sent her home.

On a trip to Nigeria in 1989, Ifeoma Udogwu recruited a new servant. The family of thirteen-year-old Beatrice Okezie agreed to send her to the United States with the Udogwus on the assumption and condition that she would receive an education. Instead, the defendants forced her to work as an unpaid servant, subjected her to abuse similar to what Rosemary had endured, and confiscated (and cashed) her pay checks from her job at a fast food restaurant.

On appeal, defendants argue: (1) that the court abused its discretion in admitting to evidence, over authenticity and hearsay objections, a letter in which Ezeonu stated that Rosemary was not his daughter and recited certain damaging circumstances concerning the Udogwu's violation of immigration laws; (2) that the court abused its discretion in denying defendants' motion to take depositions in Nigeria; and (3) that the restitution order is excessive.

I.

We need not reach the merits of these first two questions, because we hold any error harmless in light of the evidence presented at trial against the Udogwus. Under Rule 52 (a) of the Federal Rules of Criminal Procedure "[a]ny error ... which does not affect substantial rights shall be disregarded. Fed. R. Crim. P. 52(a); *see also United States v. Dhinsa,* 243 F.3d 635, 659 (2d Cir. 2001) (applying harmless error analysis to claim that evidence was improperly admitted at trial).

As to the first question, the Udogwus argue that the letter was not properly authenticated, because (*inter alia)*the letter was not vetted by a handwriting expert, it appeared mysteriously in their mailbox, and it is rebutted by another letter that was offered by the Udogwus but was deemed inauthentic by the district court.

We find any error harmless. The letter's arguably prejudicial aspects deal primarily with the allegations involving

Rosemary, which composed only two of the ten overt acts supporting Count One. The letter had no bearing on six of the eights counts charged, and it was largely cumulative as to the remaining two counts (including Count One). Additionally, there is no indication that the jury relied upon the letter in reaching its verdict. The jury did not have access to the letter during deliberation, and it made no request to view it.

Appellants claim unfair prejudice. They point specifically to a portion of the letter detailing a threat Ifeoma Udogwu allegedly made to kill Rosemary. This no doubt can be prejudicial; but the damage was inconsequential in light of the breadth of evidence of other violent acts properly admitted against Ifeoma Udogwu, including her physical and psychological abuse of the child, and her efforts to hire a killer to dispose of an enemy. *United States v. Morales,* 185 F.3d 74, 83 (2d Cir. 1999) (finding no prejudicial spillover where inadmissible evidence was no more shocking that admissible evidence).

Appellants, for their part, offer conclusory, largely unsupported assertions that the letter "thoroughly undermined the jury's ability to determine the Udogwus' guilt." Appellants Br., at 19. However, admissible evidence of guild was overwhelming; there is nothing to show that the jury was swayed by the disputed document's content, or that it even considered its content.

As to the second question, the Udogwus argue that the district court denied a motion to take the deposition of one Inspector Paul Ndujife in Nigeria, and that the ruling was an abuse of discretion.

We find any error harmless. Ndujife's only purpose as a witness would have been to refute certain FBI and Nigerian police-interview reports – documents which were used ineffectively for impeachment purposes and were never admitted into evidence at trial. Ndujife's testimony, therefore, likely would have been deemed irrelevant and inadmissable even if he were available at trial.

Because we decide this appeal on the ground of harmless error, we express no opinion about: (1) whether the district court abused its discretion in admitting into evidence, over authenticity and hearsay objections, the letter in question; and (2) whether the district court abused its discretion in denying defendants' motion to take depositions in Nigeria.

II.

The district court ordered the Udogwus to pay Beatrice $283,693.17 in restitution. The Udogwus argue that they should not be forced to pay restitution to Beatrice for the period following a January 1997 trip to Nigeria, because Beatrice returned voluntarily to the United States and was by then 21 years old.

The district court applied the standards in the Mandatory Victim Restitution Act. 18 U.S.C. §3663A. The restitutionary findings of the district court will not be disturbed absent a showing that they were "clearly erroneous." *United States v. Thompson,* 76 F.3d 442, 456 (2d Cir. 1996). The court found that Beatrice returned to get an education, but was instead forced back into servitude. That finding, which supports the restitution award, was not "clearly erroneous."

FOR THE COURT
Roseann B. MacKechnie,
Clerk of Court

By: s/ Lucille Carr

Appendix C - The Order of the District Court denying the petitioners' motion for a new trial pursuant to Federal Rules of Criminal Procedure 33 filed on December 17, 2001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

ORDER

S2 99 Cr. 795 (DC)

PROSPER EMEKA UDOGWU and
IFEOMA EZEONU UDOGWU,
a/k/a "Ifeoma Fidelia Ezeonu,"
a/k/a "Ifeoma Fidelia Udogwu,"
Defendants.

CHIN, D.J.

Defendants Prosper Emeka Udogwu and Ifeoma Ezeonu Udogwu move pursuant to Rule 33 of the Federal Rules of Criminal Procedure for a new trial based on what they purport to be newly discovered evidence: an affidavit purportedly signed by Rosemary Ifeanyichukwu Ezeonu ("Rosemary") as well as related materials. The motion is denied, without discovery or an evidentiary hearing.

Defendants have not demonstrated that the purported new evidence would probably lead to an acquittal. See, e.g., United States v. Sasso, 59 F.3d 341, 350 (2d Cir. 1995). Indeed, I am not persuaded that the purported new evidence would make any difference, and I conclude that the purported new evidence does not cast any doubt on the correctness of the

jury's verdict. The Government's evidence at trial was strong, as the Government presented substantial, credible evidence of defendants' guilt. Moreover, at trial defendants repeatedly lied or caused witnesses to lie or otherwise attempted to obstruct justice. As the Government points out, the purported new evidence lacks credibility and is inconsistent with positions taken or evidence presented by defendants at trial.

No new trial is warranted.
SO ORDERED.

Dated: New York, New York
December 17, 2001

DENNY CHIN
United States District Judge